

Texas Department on Aging

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Policy Committee

ID# 14580
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The Honorable Dan Morales
Attorney General for the State of Texas
Post Office Box 12548
Austin, Texas 78711

Re: Texas Department on Aging Opinion Request

Dear General Morales:

On behalf of the Texas Department on Aging (TDoA), your opinion is requested concerning the legality of Rider No. 9 made part of the Appropriations Act passed in the recent special session of the Texas Legislature. The TDoA is concerned with two basic questions: 1) Whether the TDoA's compliance with Rider No. 9 violates the Older Americans Act, including applicable federal regulations and state law; and 2) Whether Rider No. 9 effects substantive law requiring community-based services mandated under Title III of the Older Americans Act and conforming state laws, therefore violating Section 35 of Article III of the Texas Constitution. Rider Number 9 provides:

"Where services under Title III and Options for Independent Living are substantially equivalent to those provided by the Texas Department of Human Services Community Care Programs, the TDoA shall use the service standards, systems, billing and audit procedures, and provider bases used by the Department of Human Services to eliminate unnecessary duplication."

It is the TDoA's position that this Rider, if implemented, would fundamentally effect the TDoA operations and place the TDoA out of compliance with federal law. The Rider, in its present form, requires that the TDoA choose either to fail to comply with federal law, thus jeopardizing state funding, or fail to comply with state law (Rider #9). In other words, in the TDoA's view, Rider No. 9 could result in costly litigation against the TDoA, whether it attempts to comply with federal law or state law. Additionally, the TDoA has been advised by the Federal Department of Health and Human Services, Administration on Aging, Region VI,

of its serious reservations of any proposal which would, in effect, delegate to another agency the authority to award or administer Title III Older Americans Act Funds (see attached opinion letter of John Diaz, Regional Program Director of the Administration on Aging, Region VI).

THE TDOA'S LEGAL ANALYSIS OF THE PROBLEM

Issue I: Whether the TDOA's compliance with Rider No. 9 violates the Older Americans Act, including applicable federal regulations and state law.

Title III Mandates Local Control

An objective of the Older Americans Act is that services to the aged be community based, hence the requirement of area agencies. 42 U.S.C. Section 3025 (a)(2)(A). The Code of Federal Regulations states this goal explicitly when it describes the mission of area agencies: "the area agency shall proactively carry out...a wide range of functions...designed to lead to the development or enhancement of comprehensive and coordinated community based systems in, or serving, each community in the planning and service area." 45 CFR Section 1321.53 (a). This objective of community-based services is reflected in the funding scheme required by federal regulation. 45 CFR Section 1321.63 (b) provides that:

"Except for ombudsman services, state agencies on aging will award the funds made available under paragraph (a) of this section to designated area agencies....area agencies shall award these funds by grant or contract to community services provider agencies and organizations."

Federal grant money must flow from TDOA to the area agencies, and finally to community providers. Unless TDHS were to substantially alter its mode of contracting, it would be a violation of federal regulation for TDOA to contract for services through TDHS.

Issue II: Whether Rider No. 9 effects substantive law requiring community-based services mandated under the Title III of the Older Americans Act and conforming state laws, therefore violating Section 35 of Article III of the Texas Constitution.

Whether Rider No. 9 is unconstitutional is integrally related with the TDOA's position, set out above, regarding the intent of the Older Americans Act, which the TDOA has interpreted as requiring a locally controlled, quality delivery system of services, to be provided through the area agencies on aging network, to insure quality and local control of services. It is the TDOA's position that Rider No. 9 is unconstitutional because it substantially

effects the TDoA's ability to comply with this federal mandate and the requirements of conforming state law.


It is well established in Section 35 of Article III of the Texas Constitution that general legislation controls over conflicting language in an appropriations act. Attorney General Opinions No. V-1254 and No. JM-1196. Both the legislative intent of the Older Americans Act and the general principle under Section 35 of Article III of the Texas Constitution support the TDoA's position that the TDoA must comply with Title III of the Older Americans Act mandate to provide a coordinated community based system of service delivery which is comprehensive in serving each community in Texas. Rider No. 9 is in direct conflict with this requirement where it provides that the TDoA must utilize the systems of the TDHS where services under Title III and Options for Independent Living are substantially equivalent to those provided by the TDHS.

Rider No. 9 places the TDoA in irreconcilable conflict with its federal mandate and therefore effects the ability of the TDoA to comply with substantive law in violation of Article III, Section 35 of the Texas Constitution. It is well established in federal regulation that federal grant money must flow from TDoA to the area agencies, and finally to community providers. 45 CFR Section 1321.63 (b). This requirement may not be compromised by state law without violating the intent and requirements of the Older Americans Act. 42 U.S.C. Section 3025 (a)(2)(A). Rider No. 9 compels the TDoA to engage in such a violation, effects the ability of the TDoA to comply with substantive law and is therefore unconstitutional (also see attached opinion letter of John Diaz, Regional Program Director of the Administration on Aging, Region VI).

We are hopeful that this analysis is helpful to the Opinions Committee in understanding the TDoA's legal position. Please do not hesitate to contact the TDoA or our legal counsel, Assistant

Attorney General Omar V. Guerrero (463-2120), if you have questions.

Sincerely,


Dan Roberts, Chairman
Texas Board on Aging

DR/PS/OG/smm

Enclosure

cc: TDoA Board members
Harriet Griffin, CAC Chairperson
Pat Cole, Governor's Office
David A. Talbot, Jr., Governor's Office
Albert Hawkins, LBB
Tom Valentine, LBB
Jose Acosta, LBB
Jim Ray, TARC
Grantee Directors
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Mary Keller, Office of the Attorney General
Madeleine Johnson, Office of the Attorney General
Jim Todd, Office of the Attorney General
Jennifer Riggs, Office of the Attorney General
Omar Guerrero, Office of the Attorney General